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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MICHAEL PERKINS, 95-A-0851,

Plaintiff,

-v-

08-CV-6248CJS (Fe)

D. F. NAPOLI,
J. COLVIN,
M. BRIDGE,
S. HOPE,
M. McGRAIN,
D. FORREST,
R. DILDINE,
J. MILLER,
S. COMFORT
D. ALLEN, and
C. MILLER,

ORDER

Defendants.

Plaintiff Michael Perkins, is an inmate proceeding *pro se*. By Order filed September 15, 2008, plaintiff was directed to file a single amended complaint in which he raises all of his related claims against each of his intended defendants. In response to the Court's Order, plaintiff filed an Amended Complaint (Docket No. 10), listing the above-captioned defendants. The Amended Complaint is now the operative pleading for this action, and is subject to review pursuant to 28 U.S.C. §§ 1915 and 1915A.

Subsequent to filing the amended complaint, however, plaintiff filed additional motions: a motion for appointment of counsel (Docket No. 12), a motion to file a Second Amended Complaint

Docket No. 14), and a motion for an extension of the time in which to file a Second Amended Complaint (Docket No. 15).

In light of plaintiff's requests, he is granted one final opportunity to file another amended complaint. Plaintiff is reminded that the Second Amended Complaint will **completely replace** the prior amended complaint in the action. "It is well established that an amended complaint ordinarily supersedes the original and renders it of no legal effect." See Arce v. Walker, 139 F.3d 329, 332 n. 4 (2d Cir. 1998) (quoting International Controls Corp. v. Vesco, 556 F.2d 665, 668 (2d Cir. 1977)); see also Shields v. Citytrust Bancorp, Inc., 25 F.3d 1124, 1128 (2d Cir. 1994). Therefore, he should set forth all of his claims against each of his defendants in a manner that complies with requirements of the Federal Rules of Civil Procedure 8 and 10.

Further, plaintiff is advised that the Second Amended Complaint will be subjected to an initial screening pursuant to 28 U.S.C. § 1915 and 1915A, which provides that the Court shall dismiss a complaint if the action (i) is frivolous or malicious; (ii) fails to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(a); see also Abbas v. Dixon, 480 F.3d 636 (2d Cir. 2007). **If plaintiff fails to file a Second Amended Complaint by May 5, 2009, the Court will**

proceed on the Amended Complaint (Docket No. 10), and review the Amended Complaint accordingly.

Plaintiff's request for appointment of counsel pursuant to 28 U.S.C. § 1915(e) is denied at this time. The Court has not yet determined which, if any, of plaintiff's claims are sufficient to go forward. Thus, there is insufficient information before the Court at this time to make the necessary assessment of plaintiff's claims under the standards promulgated by Hendricks v. Coughlin, 114 F.3d 390, 392 (2d Cir. 1997), and Hodge v. Police Officers, 802 F.2d 58 (2d Cir. 1986). Generally, evaluation of such a request requires that issue be joined.

ORDER

IT IS HEREBY ORDERED that the Amended Complaint (Docket No. 10) is the operative pleading for this action;

FURTHER, plaintiff is granted leave to file a Second Amended Complaint as directed above, and the time to file the Second Amended Complaint is extended to **May 5, 2009**;

FURTHER, that the Clerk of the Court is directed to send to plaintiff with this order a copy of the Amended Complaint (Docket No. 10) complaint, a blank § 1983 complaint form, and the instructions for preparing an amended complaint;

FURTHER, that in the event plaintiff fails to file an amended complaint as directed above by **May 5, 2009**, the amended complaint

(Docket No. 10) shall be reviewed pursuant to 28 U.S.C. §§ 1915 and 1915A; and

FURTHER, that plaintiff's motion for appointment of counsel is denied without prejudice, as premature.

SO ORDERED.

s/Michael A. Telesca
MICHAEL A. TELESCA
United States District Judge

Dated: February 25, 2009
Rochester, New York